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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/306,790	05/07/1999	GREGORY S. PROVOLNY	68223/0122	3957

7590 04/04/2003

FOLEY & LARDNER  
3000 K STREET  
SUITE 500  
WASHINGTON, DC 200075109

EXAMINER

BANANKHAH, MAJID A

ART UNIT	PAPER NUMBER
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2127

DATE MAILED: 04/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.  
09/306,790

Applicant(s)  
Gregory Povolny et al.

Examiner  
Majid Banankhah

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2127



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on May 7, 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27, 29-33, and 35-50 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-27, 29-33, and 35-50 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I Claims 1-24, drawn to channel assignment, classified in Class 370, subclass 329, and 348.

Group II Claims 25-27, 29-33, 35-36, and 47-50 drawn to state recovery, classified in Class 714, subclass 13, and 15.

Group III Claims 37-46, drawn to control of data transmission through a network, classified in Class 370, subclass 235.

2. Inventions I-III are related as sub-combinations disclosed as usable together in a single combination. The sub-combinations are distinct from each other if they are shown to be separately usable. In the instant case, inventions I-III has separate utility such as, (I) allocating a communication channel to a user for transmission of information, and reserving time slot for communication (Claim 1, **first portion through the first channel, and second portion through the second channel**) (II) reading a backup processor or digital data processing system to replace a failed primary processor, and state recovery by restoring data in

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a data file (claim 25, **system for transferring file** [line 1], **determine status information indicates that transfer was incomplete** [lines 9-10]), (III) means to regulate the amount of information transmitted through the network once the data is in the network (claim 37, **computer for transmitting a request to transfer a file, managing computer for receiving the transfer request** [line 2-3], and **receiving the transferred data file from the source computer** [source computer identified as having data file by the managing computer, lines 5, 8-9]). Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and have acquired a separate status in the art because of their recognized divergent subject matter, and the search required for Groups I-III are different, restriction for examination purposes as indicated is proper.

3. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

A *shortened statutory period* for response to this office action is set to expire **ONE MONTH**. Or thirty days, whichever is

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longer, from the mailing date of this communication. (35 U.S.C. § 133). Extensions of time may be obtained under the provision of 37 CFR 1.136(a).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Maid A. Banankhah** whose voice telephone number is (703) 308-6903. A voice mail service is also available at this number.

All response sent to U.S. Mail should be mailed to:  
**Commissioner of Patent and Trademarks**  
**Washington, D.C. 20231**

**Hand-delivered responses should be brought to Crystal Park Two, 2021 Crystal Drive, Arlington. VA, Six Floor (Receptionist).** All hand-delivered responses will be handled and entered by the docketing personnel. Please do not hand deliver responses to the Examiner.

**All Formal or Official Faxes must be signed and sent to either (703) 746-7239 or (703) 746-7239.** Official faxes will be handled and entered by the docketing personnel. The date of entry will correspond to the actual FAX reception date unless that date is a Saturday, Sunday, or a Federal Holiday within the District of Columbia, in which case the official date of receipt will be

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the next business day. The application file will be promptly forwarded to the Examiner unless the application file must be sent to another area of the office, e.g., Finance Division for fee charging, etc.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Maid Banankhah

April 1, 2003

MAJID A. BANANKHAH  
PRIMARY EXAMINER